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§ 30.232 What will the official record of the probate case contain?

The official record of the probate case will contain:

- (a) A copy of the posted public notice of hearing showing the posting certifications;
- (b) A copy of each notice served on interested parties with proof of mailing;
- (c) The record of the evidence received at the hearing, including any transcript made of the testimony;
- (d) Claims filed against the estate;
- (e) Any wills, codicils, and revocations;
- (f) Inventories and valuations of the estate;
- (g) Pleadings and briefs filed;
- (h) Interlocutory orders;
- (i) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renounced property;
- (j) In the case of sale of estate property at probate, copies of notices of sale, appraisals and objections to appraisals, requests for purchases, all bids received, and proof of payment;
- (k) The decision, order, and the notices thereof; and
- (l) Any other documents or items deemed material by the judge.

§ 30.233 What will the judge do with the original record?

- (a) The judge must send the original record to the designated LTRO under 25 CFR part 150.
- (b) The judge must also send a copy of:
 - (1) The order to the agency originating the probate, and
 - (2) The order and inventory to other affected agencies.

§ 30.234 What happens if a hearing transcript has not been prepared?

When a hearing transcript has not been prepared:

- (a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and
- (b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

43 CFR Subtitle A (10–1–09 Edition)

DECISIONS IN FORMAL PROCEEDINGS

§ 30.235 What will the judge's decision in a formal probate proceeding contain?

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

(a) In all cases, the judge's decision must:

- (1) Include the name, birth date, and relationship to the decedent of each heir or devisee;
 - (2) State whether the heir or devisee is Indian or non-Indian;
 - (3) State whether the heir or devisee is eligible to hold property in trust status;
 - (4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;
 - (5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;
 - (6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;
 - (7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;
 - (8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and
 - (9) Include the signature of the judge and date of the decision.
- (b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:

- (1) Approve or disapprove the will;
 - (2) Interpret provisions of an approved will as necessary; and
 - (3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.
- (c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent's trust or restricted property, the decision will include the information in

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paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

§ 30.236 What notice of the decision will the judge provide?

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

§ 30.237 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.236.

(b) If the petition is based on newly discovered evidence, it must:

(1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and

(2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

§ 30.238 Does any distribution of the estate occur while a petition for rehearing is pending?

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is

pending, unless otherwise directed by the judge.

§ 30.239 How will the judge decide a petition for rehearing?

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on all persons whose interest in the estate might be adversely affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(3) Consider, with or without a hearing, the issues raised in the petition.

(c) The judge may affirm, modify, or vacate the former decision.

(d) On entry of a final order, the judge must distribute the order as provided in this part. The order must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board, within 30 days of the date on which the order was mailed, and giving the Board's address.

§ 30.240 May I submit another petition for rehearing?

No. Successive petitions for rehearing are not permitted. The jurisdiction of the judge terminates when he or she issues a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

§ 30.241 When does the judge's decision on a petition for rehearing become final?

The decision on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of